## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

JOSE RAFAEL NOVA NIVAR

CRIMINAL ACTION NO. 18-10448-WGY

Defendant.

YOUNG, D.J.

June 6, 2019

## ORDER

Having carefully reviewed the disc (Exhibit 4) and having further reviewed Exhibits 1-3, the witnesses' testimony, the memoranda of counsel, and their able arguments, this Court denies the motion to dismiss.

There was reasonable suspicion of Mr. Nivar sufficient to detain him for 15-16 minutes in order to present his photo to Ms. Garcia. There was no Fourth Amendment violation.

The problem with a suggestive photo presentation is that it may well affect the reliability of the identification. Here, in light of all the evidence, there is no genuine issue but that Garcia's identification of Nivar as the man she picked up and drove around for 3-5 minutes was accurate. Thus there is no 5<sup>th</sup> Amendment violation.

It is for the jury to decide whether he was her drug supplier. This Court rules only that her identification of Nivar is admissible. A full opinion will follow.

SO ORDERED.

WILLIAM G.

DISTRICT JUDGE